

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
DULUTH DIVISION**

VIRGIN RECORDS AMERICA, INC., a
California corporation; CAPITOL
RECORDS, INC., a Delaware
corporation; SONY BMG MUSIC
ENTERTAINMENT, a Delaware general
partnership; ARISTA RECORDS LLC, a
Delaware limited liability company;
INTERSCOPE RECORDS, a California
general partnership; WARNER BROS.
RECORDS INC., a Delaware corporation;
and UMG RECORDINGS, INC., a
Delaware corporation,

Plaintiffs,

vs.

Jammie Thomas,

Defendant.

Case No.: 06cv1497-MJD/RLE

**PLAINTIFFS' MOTION IN LIMINE TO
PRECLUDE DEFENDANT FROM
MAKING UNFOUNDED,
PREJUDICIAL STATEMENTS TO
THE JURY**

Plaintiffs respectfully move this Court under Fed. R. Civ. P. 403 for an Order precluding Defendant from making unfounded, prejudicial accusations against Plaintiffs to the jury. In support of their motion, Plaintiffs state as follows:

BACKGROUND

In her Statement of the Case (Doc. No. 62), Defendant levels a number of accusations against Plaintiffs that have no basis in fact and are obviously designed to inflame prejudice against Plaintiffs. Specifically, Defendant accuses Plaintiffs of “follow[ing] the motto usually attributed to Soldier of Fortune magazine: ‘Kill them all; let God sort them out.’” (*Id.* at 1.) Defendant also accuses Plaintiffs of selecting defendants that “are typically lower income” when

pursuing similar claims of copyright infringement. (*Id.* at 2.) Both accusations are completely groundless. (Reynolds Decl. ¶ 2, attached as Exhibit A).

Before filing this motion, undersigned counsel sent Defendant's counsel two email inquiries asking whether Defendant intended to make similar statements to the jury and, if so, to provide the basis for such accusations. (Reynolds Decl. ¶ 3.) In an effort to avoid filing this motion, undersigned counsel also requested that Defendant's counsel confirm in writing that he did not intend to make such statements to the jury. (*Id.*) Defendant's counsel neither confirmed his intent nor provided any basis for the accusations. (*Id.*)

ARGUMENT

All parties before the Court have the right to a fair trial based on the evidence. *Ramstad v. Lear Siegler Diversified Holdings Corp.*, 836 F. Supp. 1511, 1514 (D. Minn. 1993). Rule 403 permits the exclusion of evidence where its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403; *see also E. I. Du Pont de Nemours & Co. v. Berkley & Co.*, 620 F.2d 1247, 1272 (8th Cir. 1980) (affirming preclusion of evidence with "dubious" relevance and significant potential for prejudice).

Here, any suggestion that Plaintiffs deliberately select "lower income" defendants and "follow the motto . . . 'Kill them all; let God sort them out'" should be precluded under Rule 403, because the nonexistent probative value of such unfounded statements is substantially outweighed by the danger of unfair and irreparable prejudice to Plaintiffs. Specifically, as noted above, there is no basis whatsoever for any such assertions (*see* Reynolds Decl. ¶ 2). On the other hand, such accusations are apparently designed only to inflame prejudice and bias the jury against Plaintiffs. Such spurious allegations have no place in a fair trial. Plaintiffs have the right

to a fair and unbiased trial without unnecessary inflammatory remarks such as those contained in Defendant's Statement of the Case, and, thus, Plaintiffs respectfully request that Defendant be precluded from making such statements to the jury.

CONCLUSION

WHEREFORE, Plaintiffs ask that Defendant's counsel be precluded from making unfounded, prejudicial accusations against Plaintiffs to the jury.

A form of order is attached for the Court's convenience.

Respectfully submitted this 24th day of September 2007.

s/ Laura G. Coates
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